HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal Nos.848 of 2004 and 2478 of 2005

Writ Appeal No.848 of 2004

Between:

The Appellate Authority & Board of Directors
of Nagarjuna Grameena Bank, Khammam and
two others. …Appellants

And

N. Seetharami Reddy …Respondent.

Counsel for the appellants : Ms. V. Uma Devi for
Sri K. Srinivasa Murthy.

Counsel for the respondent : Sri G. Vidyasagar

Writ Appeal No.2478 of 2005

Between:

N. Seetharami Reddy …Appellant

And

The Appellate Authority & Board of Directors
of Nagarjuna Grameena Bank, Khammam and
two others. …Respondents.

Counsel for the appellant : Sri G. Vidyasagar

Counsel for the respondent s : Ms. V. Uma Devi for
Sri K. Srinivasa Murthy.

::J U D G M E N T::

3rd April, 2007

Per G.S. Singhvi, C.J.

These cross appeals by the functionaries of Nagarjuna Grameena Bank, Khammam (hereinafter referred to as 'the bank') and Shri N. Seetharami Reddy (hereinafter referred to as 'the delinquent officer') are directed against order dated 17-2-2004 passed by the learned Single Judge in Writ Petition No.5391 of 1993, whereby he declared that the management of the bank ought not to have held departmental enquiry against the delinquent officer under Nagarjuna Grameena Bank Staff Service Regulations, 1980 (for short, 'the Regulations') in respect of the charges, which were subject matter of enquiry held under Section 60 (1) of the Andhra Pradesh Co-operative Societies Act, 1964 (for short, 'the 1964 Act') and substituted the punishment of dismissal with that of compulsory retirement.

The Facts:

The delinquent officer joined the service of the bank as Branch Manager on 1-10-1976. After about two years, he was deputed as Managing Director of Chandur Farmers Co-operative Society. While holding that post, he was placed under suspension with effect from 26-4-1986 and an enquiry was conducted under Section 60 of the 1964 Act on the charges of financial irregularities. Deputy Registrar, Cooperative Societies, Nalgonda, who was appointed as enquiry officer, submitted report with the finding that the charges levelled against the delinquent officer have not been proved. Accordingly, he was exonerated.

In the meanwhile, the delinquent officer was placed under suspension by the bank and a regular departmental enquiry was instituted against him under the Regulations. The Chairman and Disciplinary Authority of the bank issued Memo dated 3-10-1986 to the

delinquent officer for holding enquiry against him on the following charges:

i) It is alleged that you had withdrawn a sum of Rs.50,000/- on 26th April 1984 from "Suspense Account" of the society purportedly for purchase of Electric motors/pump sets and reversed the entry on 8th May 1984 by producing a fictitious invoice for Rs.49,473-04 without actually purchasing any motors/pump sets. You had thus cheated the institution and dishonestly misappropriated a sum of Rs.49,473-04 for your personal benefits which act of yours is highly prejudicial and detrimental to the interests of the institution.

ii) It is reported that you had misappropriated a sum of Rs.13,500/- by raising fraudulent debits to the following three loan accounts on 28th December, 1985 reportedly using forged withdrawal slips without the knowledge of the borrowers.

Sl.No.	**ACC Loan A/c.No.**	**Name of the borrower** **Sarvasri**	**Amount debited**
1.	2/73	S. Parvathalu	4,500/-
2.	2/74	S. Papaiah	4,000/-
3.	12/56	Y. Pitchaiah	5,000/-
		Total:	13,500/-

You have also not opened the accounts in the loan ledgers which act of yours is highly prejudicial to the interests of the institution.

iii) It is alleged that you had dishonestly withdrawn Rs.15,000/- on 2nd July, 1985 by reportedly using forged withdrawal slips to the accounts as under:

S.No.	**ACC Loan A/c.No.**	**Name of the borrower** **Sarvasri**	**Date of Debit**	**Amount Debited**

1.	3/68	P. Laxma Reddy	2-7-85	5,000/-
2.	3/69	R.Pravinder Reddy	-do-	5,000/-
3.	1/41	k. Rajah Venkateswar Rao	-do-	5,000/-
		Total:		15,000/-

and misappropriated the amount for your personal benefit.

iv) It is alleged that you had on 1st July 1985 debited the following 13 loan accounts reportedly with forged withdrawal slips and withdrawn a sum of Rs.20,000/- to adjust the shortfall amount in consumer goods account which you had misappropriated earlier:

S.No.	**ATL A/c.No.**	**Name of the borrower** **Sarvasri**	**Amount**
1)	9/33	B. Mallaiah	500/-
2)	9/34	B. Mallaiah	500/-
3)	9/35	B. Mallaiah	2,000/-
4)	9/36	B. Mallaiah	500/-
5)	3/52	B. Yerraiah	2,000/-
6)	3/54	N. Ramaiah	2,000/-
7)	3/55	N.Narsimha	2,000/-
8)	3/65	P. Pentaiah	2,000/-
9)	3/66	S. Bheemaiah	2,000/-
10)	8/22	V. Iddaiah	2,000/-
11)	4/44	T. Narsimha	2,000/-
12)	4/45	M. Pedamaraiah	500/-
13)	3/56	N. Balaiah	2,000/-
		Total:	20,000/-

Further, on a subsequent date, you are alleged to have made payments on demand to the following six borrowers out of the 13 mentioned above from your personal resources duly obtaining debit slips from them with date 1st July, 1985 and inserted them in place of the forged withdrawal slips which you had earlier passed for payment.

				Rs.
1)	ATL	9/33	B. Mallaiah S/o.Roshaiah	500/-
2)	”	9/34	B. Mallaiah S/o.Mallaiiah	500/-
3)	“	9/35	B. Mallaiah S/o.Ramaiah	2,000/-
4)	“	9/36	B. Mallaiah S/o.Peda Venkaiah	500/-
5)	“	4/45	M. Peda Maraiah S/o.Buchaiahh	500/-
6)	“	3/65	P. Pentaiah S/o. Galaiiah	2,000/-
			Total:	6,000/-

v) It is alleged that you had withdrawn a sum of Rs.500/- on 1st July 1985 from ATL 9/32 relating to Shri Bollam Muthaiah S/o.Venkaiahh, reportedly using a forged withdrawal slip and utilized the amount for your personal benefit. And, you had paid the amount to the borrower subsequently on 12th July 1985. Thus, you had misappropriated a sum of Rs.500/- temporarily from 1st July 1985 to 12th July 1985 which act of yours is highly prejudicial to the interest of the bank.

vi) It is alleged that you had colluded with the following borrowers and utilized funds to the tune of Rs.23,500/- from their loan accounts, as detailed below, for your personal benefits. Further, you have not so far cleared off the due amounting to Rs.33,595-40 after lapse of 6 years:

Sl.No.	**A/c.No.**	**Name of the borrower**	**Date**	**Amount**	**Out standings**
		Sarvasri			
1)	1/35	S. Damodar Reddy	16.7.80	5,000/-	9,384-60
2)	1/27	Y. Malla Reddy	16.7.80	3,500/-	3,172-95

3)	12/58	P. Syyamsundar	9-8-82		
4)	12/44	Reddy	4-9-80	15,000/-	21,037-85
5)	12/14	-do-	24-6-81		
		-d0-			
		Total:		23,500/-	33,595-40

Thus, you had acted in a way prejudicial to the interest of the institution.

vii) a) It is reported that 22 electric motors (of 5 HP) were missing form the stores under your personal control which are worth Rs.74,629-50 as per book value.

b) It is reported that there was a shortfall in various items relating to Electric Motors/Pump sets such as tubes bends etc. the estimated cost of which is Rs.19,261-06 and you are alleged to have misappropriated the amount for your personal benefits;

c) It is reported that there was a short fall in consumer goods, fertilizers and pesticides of worth Rs.28,697-50 and you are alleged to have colluded with the store assistants and dishonestly misappropriated the amount for your personal benefits.

Thus, you had caused financial loss to the society and acted against the interests of the institution.

viii) It is alleged that you had displayed utter negligence in maintaining/verifying the record of “Provisional Receipts” and as a result the amounts collected by the staff from the bank’s clientele against the following provisional receipts, are not so far accounted for in the society books, which act of yours caused financial loss to the society.

Sl.No.	Provisional Receipt No.	Date	Account No.	Amount Rs.
1)	218046	--	ATL 9/25	1,000/-
2)	218333	7-1-85	ATL 9/25	1,000/-
3)	218334	18-1-85	ACC 14/57	1,000/-
4)	218047	--	ATL 12/	800/-
5)	218048	--	ATL 2/	1,000

	Total:	4,800/-

ix) It is reported that you had not accounted for the cost of empty gunny bags whose worth approximately comes to a tune of Rs.18,060/- and to that extent the society had suffered the financial loss.

02) You had thus violated regulations No.17, 19 and 30 (1) of our Staff Service Regulations, 1980. You are, therefore, hereby required to submit a written statement in your defence, if any in respect of the charges referred to above within 15 days from the date of receipt of this letter. If no written statement is received from you within the stipulated period, it will be deemed that you have no explanation to offer in your defence and you would be proceeded against accordingly in the matter."

The delinquent officer challenged the enquiry proceedings at the threshold by filing Writ Petition No.3241 of 1991. The same was dismissed by the learned Single Judge vide his order dated 11-3-1991 with some observations. The learned Single Judge categorically held that the bank is not precluded from holding disciplinary enquiry merely because the writ petitioner had been found not guilty in the surcharge proceedings held under Section 60(1) of the 1964 Act. The relevant portions of the order of the learned Single Judge are reproduced below:

> "I am of the opinion that the disciplinary proceedings need not and cannot depend upon the surcharge proceedings nor can it be vice versa. Each proceedings depend entirely on materials which are collected in each of those proceedings and which are duly disclosed to the delinquent. The conclusions which the disciplinary authority may come to need not necessarily and cannot, in the present case, influence the surcharge proceedings unless such proceedings are brought on record with notice to the petitioner with an opportunity for him to submit his case in relation thereto. The same principles may apply to any material collected in the surcharge proceedings if the respondents wish to use them in the

domestic proceedings. In either case, the petitioner is assured of adequate opportunity of knowing the materials which are proposed to be used against his explanation/defence statement in respect of such materials. In this view, even if there is inter-connection between the allegations against the petitioner, the conclusions come to in either cannot be determinative of liability of the petitioner in the other proceedings unless such materials form part of the record in the respective proceedings.

In this view, it is not necessary for me to entertain this writ petition. I, however, make it clear that the respondents will not take into consideration any material or conclusion come to by the officers of the Co-operative department in the surcharge proceedings unless such proceedings are put to the petitioner and he is given an adequate opportunity of submitting his explanation in relation thereto.

Counsel for the petitioner submits that since the time within which he should have submitted defence statement has expired during the pendency of these proceedings, he may be given further time in this regard. After hearing counsel on both sides, I am of the view that if the disciplinary proceedings have not been terminated, the petitioner will submit his explanation within a period not later than three weeks from today. Such explanation shall be taken into consideration in passing final orders.

The writ petition is, therefore, dismissed with the above observations. No costs."

Shri K. Mallikarjuna Rao, Manager (P & D Department) of the bank, who was entrusted with the enquiry, submitted report dated 4-5-1991 with the finding that charges No. (i), (ii), (iii), (v), (vi) and (viii) have been proved against the delinquent officer.

On receipt of the enquiry report, Chairman-cum-Disciplinary Authority issued notice dated 28-1-1992 to the delinquent officer requiring him to show cause against his proposed dismissal from service. He also gave opportunity of personal hearing to the

delinquent and then passed order dated 3-3-1992, whereby he confirmed the proposed punishment. The appeal preferred by the delinquent officer was dismissed by the Board of Directors of the bank albeit without assigning reasons. This was conveyed to the delinquent officer by the General Manager of the bank vide letter dated 5-11-1992.

The delinquent officer challenged the order of punishment in Writ Petition No.5391 of 1993 on several grounds including the following:

a) that the enquiry proceedings held by the bank are barred by res judicata;

b) that the charges levelled against him were baseless;

c) that the enquiry is vitiated due to violation of the rules of natural justice inasmuch as he had not been given reasonable opportunity of defence and the order of punishment passed by the Disciplinary Authority as well as the one passed by the Appellate Authority are devoid of reasons; and

d) that the punishment of dismissal from service was wholly disproportionate to the misconduct found proved.

In the counter affidavit filed on behalf of the functionaries of the bank, it was pleaded that the order of punishment was passed after holding an enquiry in accordance with the provisions of the Regulations and the delinquent had been given opportunity of defence at every stage of the enquiry.

The learned Single Judge noted the grounds on which the delinquent challenged the order of punishment and rejected his plea that the bank was not competent to hold enquiry. However, he accepted the latter's contention that in view of the finding recorded in the proceedings held under Section 60(1) of the 1964 Act, the bank was not entitled to hold him guilty of the charges, which were not found

proved. The learned Single Judge went to the extent of declaring the proceedings of enquiry as without jurisdiction. The relevant portions of the order passed by the learned Single Judge are extracted below:

> "Since I am of the opinion that the respondent-Bank ought not to have made a roving enquiry into the very same charges, which is within the domain of the society and the enquiry was conducted without such a wide jurisdiction being conferred on the Bank and further in the statutory enquiry under Section 60(1) of the Act, the petitioner was found not guilty of the charges and there was no deficiency caused to the finance of the society and the loss caused in view of the irregularities purported to have been committed by the petitioner was made good even before the enquiry could be launched and the only grievance of the respondent-Bank seems to be that its reputation was at peril, the punishment of dismissal from service of the Bank is disproportionate to that of the misconduct alleged against the petitioner. In view of the above, remitting the matter back for considering the proportionality of the punishment by the disciplinary authority may not be desirable. The matter can be dealt with and decided in this proceeding itself.
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> Under the circumstances, I am of the view that the punishment of compulsory retirement from service of the Bank with effect from 30-3-1992 would be just and proper. Further, the petitioner's services from the date of suspension till 30-3-1992 may be treated as on duty and he shall be paid all the arrears of wages for that period and also the terminal benefits including the pension, if he is otherwise eligible, within a period of three months from the date of receipt of a copy of this order. Grounds 2 and 3 are thus answered."

We have heard Ms. V. Uma Devi, learned counsel appearing for the appellants in Writ Appeal No.848 of 2004 and Sri G. Vidyasagar, learned counsel appearing for the appellant in Writ Appeal No.2478 of 2005. In our opinion, the order under challenge is liable to be set aside.

Admittedly, Writ Petition No.3241 of 1991 filed by the delinquent officer for stay of the enquiry on the ground that he had been exonerated in the proceedings held under Section 60 (1) of the 1964 Act was dismissed by the learned Single Judge. Therefore, the conclusion recorded in the order under challenge that the bank was not entitled to hold enquiry into the charges, which were subject matter of enquiry under Section 60(1) of the 1964 Act, is clearly unsustainable. In our considered view, order dated 11-3-1991 operated as res judicata qua the delinquent officer's challenge to the proceedings initiated by the bank under the Regulations and the learned Single Judge committed a serious error by holding that the bank should not have held enquiry into the same charges.

We are further of the view that in the face of the finding recorded by him that the bank was not entitled to hold disciplinary enquiry into the charges, which also constituted the subject matter of surcharge proceedings held under the 1964 Act, the learned Single Judge could not have sustained the order of dismissal and substituted the same with that of compulsory retirement. The doctrine of proportionality could be invoked by the Court only when it is found that the enquiry held against the delinquent is in accordance with law and the rules of natural justice and the finding recorded by the enquiry officer and/or disciplinary authority does not suffer from any legal infirmity. Once the learned Single Judge came to the conclusion that the enquiry held against the delinquent under the Regulations was legally untenable, there was no question of applying the doctrine of proportionality and substituting the punishment of dismissal with that of compulsory retirement.

Another error in the order under challenge is that the learned Single Judge did not deal with the issue of violation of the rules of

natural justice and whether the order of punishment can be nullified without requiring the delinquent officer to establish prejudice.

In view of the above, we do not consider it necessary to deal with the other issues arising in the appeals.

In the result, the appeals are allowed. The order under challenge is set aside with the direction that the writ petition be listed before the Single Bench for fresh adjudication.

Since the matter is pending before this Court for the last 14 years, we direct that the writ petition be placed before the Single Bench on June 6, 2007.

While disposing of the appeals in the manner indicated above, we give liberty to the delinquent officer (the appellant in Writ Appeal No.2478 of 2005) to implead the bank as party to the writ petition so as to avoid its dismissal in the light of the judgment of the Supreme Court in **Ranjeet Mal v. General Manager, Northern Railway**[1].

G.S. SINGHVI, C.J.

3rd April, 2007

C.V. NAGARJUNA REDDY, J.

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[1] AIR 1977 SC 1701